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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,378	08/01/2003	Kenneth L. Byard	9157B	4159
7590	07/16/2004		EXAMINER	
John M. Harrison 2139 E. Bert Kouns Shreveport, LA 71105			WEEKS, GLORIA R	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 07/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/632,378	BYARD, KENNETH L.	
	Examiner	Art Unit	
	Gloria R Weeks	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☒ Claim(s) 33 and 34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/1/03</u> . | 6) <input type="checkbox"/> Other: _____ |

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 17-20, 30 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Byard (USPN 2,618,779).

In reference claims 1-4, 17-20, 30 and 32, Byard discloses a hammer-operated stapling apparatus for driving staples, comprising: a magazine (10); a staple rail (32) removably (column 3, lines 1-5) provided in the magazine (10) for supporting a supply of staples (24) of selected size; a follower (36) slidably provided in the magazine (10); a spring (39) engaging the follower (36); a head apparatus provided on one end of the magazine (10) having a back head (16) and a front head (17); a spring (31) biased plunger (21) reciprocally mounted in the head apparatus; a magazine cover (11) pivotally carried by the magazine (10); and a spacer (38) removably mounted (14, 15) on the magazine cover (11) and spaced from the staple.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5, 7-9, 11-15, 21, 23, 25-28 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Byard (USPN 2,618,779) in view of Landrus (USPN 4,380,312).

Regarding claims 5, 7-9, 11-15, 21, 23, 25-28 and 31, Byard discloses a hammer-operated stapling apparatus for driving staples, comprising: a magazine (10); a head apparatus (16, 17); a staple rail (32) removably (column 3, lines 1-5) provided in the magazine (10) for supporting a supply of staples (24) of selected size; a spring (31) biased plunger (21) reciprocally mounted in the head apparatus; and a magazine cover (11) pivotally carried by the magazine (10). Byard does not disclose a handle attached to a head apparatus having a front and back head separated by spacers. Landrus teaches a stapling apparatus for driving staples, comprising: a magazine (48); a head apparatus (10) having a front head (38), a back head (36), and a pair of spacers (legs of 32) interposed between the front and back head (38, 36); a staple rail (49) provided in the magazine (48); a spring (96) biased plunger (34) reciprocally mounted in the head apparatus (10); a handle (figure 1) attached to the head apparatus (10) for positioning the head apparatus (10) while driving staples from the head apparatus (10). It would have been obvious to one having ordinary skill in the art to modify the stapling apparatus of Byard to include the handle of Landrus for the purpose of positioning the stapling apparatus in desired locations. The head apparatus of Landrus includes an independent plunger guide (32) protected

Art Unit: 3721

by a front and back plate (38, 36). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the head apparatus of Byard to include the head assembly of Landrus for the purpose of limiting the drive distance of a plunger to a position dependent upon the thickness of the article receiving the staple (Landrus-abstract).

6. Claims 6, 10, 16, 22, 24 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Byard (USPN 2,618,779) in view of Landrus (USPN 4,380,312) as applied to claims 5, 11, 21 and 23, and further in view of Dvorak et al. (USPN 5,699,864).

With respect to claims 6, 10, 16, 22, 24 and 29, Byard in view of Landrus discloses an impact device having a handle, but fails to disclose the use of a handle guard. Dvorak et al. teaches an impact device having a handle (86) with a handle guard (94). It would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the apparatus of Byard to include the handle guard of Dvorak et al. for the purpose of guarding the hand during use of the apparatus (Dvorak et al.-column 6, lines 11-15).

Allowable Subject Matter

7. Claims 33 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.


Art Unit: 3721


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R Weeks whose telephone number is (703) 605-4211. The examiner can normally be reached on 7:30 am - 6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 305-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gloria R Weeks
Examiner
Art Unit 3721


grw
July 14, 2004


SCOTT A. SMITH
PRIMARY EXAMINER